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## Book Review

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# BOOK REVIEW

UNIFORM LAW FOR INTERNATIONAL SALES UNDER THE 1980 UNITED NATIONS CONVENTION. By John O. Honnold. Deventer, The Netherlands: Kluwer Law and Taxation Publishers, 1982. Pp. 586. \$70; \$40 paper.

*Reviewed by I.I. Kavass\**

The legal aspects of international contracts for the sale of goods are intrinsically complex.<sup>1</sup> First, the negotiation and performance of international contracts must frequently be conducted at a distance and with the assistance of many intermediaries. The rights and obligations of parties to an international sale are usually more manifold than those of a purely domestic sales transaction,<sup>2</sup> and the effect and scope of these international rights and obligations must be determined by sophisticated mercantile rules which are not present in all legal systems. Second, because an international sales transaction extends beyond the boundaries of one country, it is invariably affected by several legal systems which contain disparate rules for the determination of the rights and obligations of the parties. When the rules of the respective legal systems are mutually inconsistent, uncertainty and confusion is created that reaches beyond the particular sales transaction and affects the general harmony of international trade.<sup>3</sup> Third, this

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1. Berman, *The Law of International Commercial Transactions (Lex Mercatoria)*, in *A LAWYER'S GUIDE TO INTERNATIONAL BUSINESS TRANSACTIONS*, pt. III, fol. 3, at 9-55 (W. Surrey & D. Wallace, Jr. eds., 2d ed. 1983).

2. See 2 W. STRENG & J. SALACUSE, *INTERNATIONAL BUSINESS PLANNING: LAW AND TAXATION* § 7.01 (1982). Chapter 7 of this multi-volume practitioner work discusses international commercial law and the intricacies of international sales contracts.

3. On the diversity of customs and the need for uniformity of law in international trade, see Honnold, *The Influence of the Law of International Trade on*

uncertainty and confusion may be further exacerbated when private international law is applied to an international sales transaction, as the various components of a transaction may each be subject to the regulation of different legal systems. Last, the effect of private international law on the same issue also may differ from one country to another, adding havoc to confusion.<sup>4</sup> This complex situation mandates a set of international rules that would uniformly determine the rights and obligations of the parties to an international sales transaction.

After several unsuccessful attempts, the first step toward the creation of an international set of rules recently occurred. On April 11, 1980, a diplomatic conference of sixty-two states,<sup>5</sup> con-

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*the Development and Character of English and American Commercial Law*, in *THE SOURCES OF THE LAW OF INTERNATIONAL TRADE* 70 (C. Schmitthoff ed. 1964); Horn, *Uniformity and Diversity in the Law of International Commercial Contracts*, in *THE TRANSNATIONAL LAW OF INTERNATIONAL COMMERCIAL TRANSACTIONS* 9 (N. Horn & C. Schmitthoff eds., 1982); Naon, *The Convention on Contracts for the International Sale of Goods*, in *THE TRANSNATIONAL LAW OF INTERNATIONAL COMMERCIAL TRANSACTIONS* 89 (N. Horn & C. Schmitthoff eds. 1982).

4. See Gruson, *Governing-Law Clauses in International and Interstate Loan Agreements—New York's Approach*, 1982 U. ILL. L. REV. 207, 207. For general treatments of choice of law problems in international agreements, see 3 A. EHRENZWEIG & E. JAYME, *PRIVATE INTERNATIONAL LAW* (1977); 1 W. WENGLER, *INTERNATIONALES PRIVATRECHT* § 19(g) (1981). See also Dore, *Choice of Law Under the International Sales Convention: A U.S. Perspective*, 77 AM. J. INT'L L. 521 (1983).

5. The conference took place in Vienna. In addition to representatives from sixty-two states, the conference was attended by delegates of eight international organizations: the World Bank, the Bank for International Settlement, the Central Office for International Railway Transport, the Council of Europe, the European Economic Community, the Hague Conference on Private International Law, the International Institute for the Unification of Private Law (UNIDROIT), and the International Chamber of Commerce (ICC). A recent article suggests that private business enterprises have not been allowed to participate in the drafting of those international conventions which affect their interests. See Charney, *Transnational Corporations and Developing Public International Law*, 1983 DUKE L.J. 748, at 749-56. This suggestion, however, is not quite correct. Private enterprises were represented at the Vienna Conference and at the earlier meetings of the United Nations Commission on International Trade Law (UNCITRAL) by international organizations such as the ICC. For a discussion of the conference and the negotiations preceding it, see J. HONNOLD, *UNIFORM LAW FOR INTERNATIONAL SALES UNDER THE 1980 UNITED NATIONS CONVENTION* 54-56 (1982); Farnsworth, *The Vienna Convention: An International Law for the Sale of Goods*, in *PRIVATE INVESTORS ABROAD—PROBLEMS AND SOLUTIONS IN INTERNATIONAL BUSINESS* IN 1983 121 (M. Landwehr ed. 1983).

vened under the auspices of the United Nations General Assembly, unanimously adopted the text of the United Nations Convention on Contracts for the International Sale of Goods.<sup>6</sup> At the time of this writing, twenty-one states, including the United States,<sup>7</sup> have signed the 1980 Convention, and six states have submitted their ratifications or accessions. The Convention is currently pending in the United States Senate<sup>8</sup> while the legal community scrutinizes its potential effects on both United States commercial law and United States businesses.<sup>9</sup>

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6. U.N. Doc. A/CONF. 97/18, Annex I (1980) [hereinafter cited as the Convention], *reprinted in* 11 Y.B. UNCITRAL 151 (1980), U.N. Doc. A/CN.9/Ser.A/1980, *in* 19 I.L.M. 671 (1980), *and in* J. HONNOLD, *supra* note 5, at 469-503.

Working from a draft released by UNCITRAL in 1978, U.N. Doc. A/33/17, *reprinted in* J. HONNOLD, *supra* note 5, at 511-30, the conference took only five weeks to agree on the Convention's final text after years of intensive preparation. J. HONNOLD, *supra* note 5, at 54. This agreement concluded a half-century of intensive effort to unify the law governing the international sale of goods, beginning in the early 1930s at the International Institute for the Unification of Private Law (UNIDROIT), and continuing both there and at The Hague following World War II. *Id.* at 49. These efforts were concluded in 1964 when a diplomatic conference at The Hague adopted two conventions: Convention Relating to a Uniform Law on the International Sale of Goods, July 1, 1964, 834 U.N.T.S. 107, *reprinted in* 13 AM. J. COMP. L. 453 (1964), *and in* J. HONNOLD, *supra* note 5, at 539-65; Convention Relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods, July 1, 1964, 834 U.N.T.S. 169, *reprinted in* 13 AM. J. COMP. L. 472 (1964), *and in* J. HONNOLD, *supra* note 5, at 531-38. These conventions, based on civil law concepts, were ratified by most of the Western European countries. For the same reason they were accepted in Western Europe, these conventions were not widely accepted elsewhere in the world. The present Convention, which UNCITRAL initiated in 1968, will supersede the two Hague conventions approximately one year after it is ratified or acceded to by ten countries.

7. On September 21, 1983, the President submitted the present Convention to the Senate for approval. President's Message to the Senate Transmitting the United Nations Convention on Contracts for the International Sale of Goods, S. Treaty Doc. No. 9, 98th Cong., 1st Sess. iii (1983) [hereinafter cited as President's Message], *reprinted in* 19 WEEKLY COMP. PRES. DOC. 1290.

8. The Senate held hearings on the Convention in April of this year. *International Sale of Goods & Hearings on Treaty Doc. 98-9 Before the Senate Comm. on Foreign Relations*, 98th Cong., 2d Sess. (1984).

9. See Winship, *New Rules for International Sales*, 68 A.B.A. J. 1230 (1982). See also Comment, *A New Uniform Law for the International Sale of Goods: Is It Compatible with American Interests?* 2 Nw. J. INT'L L. & BUS. 129 (1980); Speidel, Book Review, 5 Nw. J. INT'L L. & BUS. 432 (1983). Ratification of the Convention was recommended by the House of Delegates of the American Bar Association. See President's Message, *supra* note 7, at 1290. The Convention has

An indispensable text for scrutinizing such international commercial transactions is Professor John Honnold's *Uniform Law for International Sales under the 1980 United Nations Convention*. This is an impressive work, written by an eminent scholar who has dedicated most of his life to the unification of international commercial law. In addition to being the Schnader Professor of Commercial Law at the University of Pennsylvania, and an acknowledged expert in United States commercial law, Professor Honnold has actively participated in the shaping of a legal regime for international business transactions.<sup>10</sup> Professor Honnold's book contains a wealth of information not available elsewhere. It is replete with references to the text of the Convention in its different stages of development; from the embryonic early working papers, to the draft of 1978, to the final text of 1980. It is really two books in one: a penetrating story about the emergence of the Convention, written by a perceptive participant; and a detailed, scholarly analysis of the Convention's function, purpose, and content.

The work expended in drafting the Convention was not wasted. The language of the Convention is very interesting because it replicates a more elegant drafting style than that traditionally used in modern legislative writing. In fact, the Convention looks deceptively simple and attractively systematic. The language is generally crisp, and the content is organized in a manner intended to produce much clearer results than those provided by the Uniform

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not, however, received unanimous approval from the legal community. See Rosett, *Critical Reflections on the United Nations Convention on Contracts for the International Sale of Goods*, 45 OHIO ST. L.J. 265 (1984); Rosett, *The International Sales Convention: A Dissenting View*, 18 INT'L LAW. 445 (1984).

10. Professor Honnold participated in the drafting of the present Convention as well as the earlier Hague conventions of 1964. From 1969 through 1974 he was the Chief of the International Trade Branch of the United Nations and the Secretary of UNCITRAL. He was the United States delegate at the Hague conference that led to the adoption of the 1964 conventions, a member of the UNCITRAL Working Groups that prepared the 1978 draft convention, and a delegate at the diplomatic conference that promulgated the 1980 Convention. He has written extensively on the law of international sales, and his knowledge of the subject is profound. For other recent Honnold writings, see Honnold, *The United Nations Commission on International Trade Law: Mission and Methods*, 27 AM. J. COMP. L. 201 (1979); Honnold, *The Draft Convention on Contracts for the International Sale of Goods: An Overview*, 27 AM. J. COMP. L. 223 (1979).

Commercial Code (UCC).<sup>11</sup>

It is important to remember, however, that the scope of the Convention is much more limited than that of the UCC. Professor Honnold notes that the Convention applies only to international nonconsumer contracts for the sale of goods and excludes mixed contracts in which the delivery of goods is only incidental.<sup>12</sup> Even within the strict scope of the commercial sale of goods, the Convention establishes rules only for the formation of contracts, the rights and obligations of buyers and sellers, their respective remedies, *force majeure*, and the assignment of risk.<sup>13</sup> The Convention leaves the resolution of such thorny questions as the validity or legality of a contract and the transfer of title to the domestic laws of the contracting parties.<sup>14</sup>

The Convention is divided into four parts, and consists of 101 articles. Part I<sup>15</sup> contains basic rules on the applicability of the Convention, the interpretation of the Convention's provisions and provisions of contracts to which the Convention applies, and other general provisions. One of the most interesting sections of Professor Honnold's book is its discussion of article 8, which deals with the interpretation of contracts. Article 8 is a fine example of the clever diplomacy employed during the drafting of the Convention that ensured its eventual adoption.<sup>16</sup> The Convention represents a compromise between the subjective and objective theories of contract law by first referring to the intentions of the parties as the primary factor to be considered in a contractual interpretation, and then suggesting that a contract's meaning be determined by the "understanding that a reasonable person" in the same circumstances as the parties would have had.<sup>17</sup> Article 11, an equally interesting provision, does away with the requirement of writing as a prerequisite to the formation of a contract

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11. U.C.C. (1978).

12. J. HONNOLD, *supra* note 5, at 77-93; the Convention, *supra* note 6, arts. 1-6.

13. *See infra* notes 17-18 and accompanying text.

14. The Convention, *supra* note 6, arts. 4-5.

15. Part I is comprised of articles 1-13. *See* J. HONNOLD, *supra* note 5, at 75-157.

16. *See id.* at 136-43. For additional discussion of the debates surrounding the drafting of the Convention, see Eörsi, *Apropos the 1980 Vienna Convention on Contracts for the International Sale of Goods*, 31 AM. J. COMP. L. 333 (1983).

17. The Convention, *supra* note 6, art. 8; *see* J. HONNOLD, *supra* note 5, at 152.

unless a "contracting state" expressly preserves this requirement.<sup>18</sup> Part II of the Convention is entitled "Formation of the Contract" and sets out the rules for offers and acceptances.<sup>19</sup> Part III consists of sixty-three separate articles dealing with contractual rights, obligations, remedies, assignment of risk, and other related issues.<sup>20</sup> Part IV is entitled "Final Provisions" and details the steps necessary to enforce the Convention and the procedures needed for contracting states to declare exceptions from the Convention's provisions.<sup>21</sup>

To ensure its ratification, the Convention's drafters made the scope of its applicability completely flexible. Ratifying states may accept any or all parts of the Convention.<sup>22</sup> Furthermore, parties to a contract are at liberty to apply, exclude, or vary any of the Convention's provisions.<sup>23</sup> One open question, which Professor Honnold addresses at length, is whether parties associated with countries that have not ratified or acceded to the Convention will be permitted to agree upon the use of the Convention as the body of rules governing their transaction.<sup>24</sup>

Whether by design or accident, the Convention, in many instances, uses legal terminology different from the UCC. The term "fundamental breach" as defined in article 25, for example, has no direct counterpart in the UCC.<sup>25</sup> The phrase "impediment beyond . . . control" of a party is used in article 79 instead of the UCC's "occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made."<sup>26</sup> A buyer is required to "take delivery of the goods" in article 53 rather than "accept" those goods under the UCC.<sup>27</sup> The term "avoidance" is used throughout part III of the Convention in lieu

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18. The Convention, *supra* note 6, art. 11; see J. HONNOLD, *supra* note 5, at 152. The requirement can be preserved by means of a declaration in accordance with the method set out in article 96. *Id.* at 154.

19. Part II is comprised of articles 14-24. *Id.* at 159-207.

20. Part III is comprised of articles 25-88. *Id.* at 209-463.

21. Part IV is comprised of articles 89-101. *Id.* at 465-67.

22. The Convention, *supra* note 6, arts. 92-96.

23. *Id.*, art. 6.

24. J. HONNOLD, *supra* note 5, at 107-12.

25. The closest the U.C.C. comes to this term is a reference in section 2-612: "Whenever . . . default . . . substantially impairs the value . . ." U.C.C. § 2-612 (1978) (emphasis added).

26. *Id.* § 2-615(a).

27. See, e.g., *id.* §§ 2-301, 2-507.

of the UCC's indiscriminate use of the terms "rejection," "revocation," "cancellation," and "termination."<sup>28</sup> The phrase "reject the goods" in article 86 of the Convention obviously has a different contractual meaning from the term "reject" as it is used in the UCC.<sup>29</sup> These differences in terminology may render much of the United States case law on UCC interpretation inapplicable to contracts governed by the terms of the Convention. Professor Honnold posits that this inapplicability is probably wise.<sup>30</sup>

The purpose of the Convention is to create an internationally uniform sale of goods law, identical in all of the ratifying countries, rather than many dissimilar bodies of law pretending to be international because they owe their origin to an international convention. Most of its provisions are self-executing, which means that they can be used in international transactions without the aid of any domestic laws. Of course, international uniformity will depend on similar interpretations of such provisions throughout the world. When the Convention comes into force, its interpretation by the domestic courts of the various ratifying countries will be intellectually exciting. Because most of the Convention's provisions are expressed in a general language intended to create broad standards rather than specific rules requiring narrow application, these general legal standards will undoubtedly require individual judicial interpretations by domestic courts of the ratifying countries. The ultimate question is whether these interpretations of the Convention will be uniform. Works the caliber of Professor Honnold's book may be very influential with the courts expected to interpret and apply the Convention.<sup>31</sup>

The greatest value of Professor Honnold's book is that it adds flesh to the bare bones of the Convention. Consisting largely of an article-by-article commentary, it is organized and written in the style of European law books.<sup>32</sup> The commentary is preceded by an

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28. *Id.* §§ 2-601, 2-608, 2-612, 2-616, 2-703, 2-711.

29. Compare the Convention, *supra* note 6, art. 86, with U.C.C. § 2-601.

30. See J. HONNOLD, *supra* note 5, at 60.

31. For a discussion of the difficulties encountered in the interpretation of a convention in another litigation-prone field of international commerce, see Simmonds, *The Interpretation of the Hamburg Convention: A Note on Article 3*, in *THE HAMBURG RULES ON THE CARRIAGE OF GOODS BY SEA 117* (S. Mankabady ed. 1978).

32. Perhaps the closest equivalents to European style law books in the United States are the tax and legislative looseleaf services. If the Convention becomes effective in the United States, it is easy to envisage the transformation



excellent introductory chapter containing a historical description of the Convention and an overview of its salient features designed to elucidate, as Professor Honnold puts it, the "issues that underlie the entire [Convention]."33

The materials pertaining to each article of the Convention are organized clearly and skillfully. An introductory note, explaining the purpose of each article in the broader context of related provisions, precedes the text of each article. Professor Honnold then provides a detailed analysis of the text along with illustrative examples, discussions of policy implications, references to the legislative history of the Convention and comparable domestic law provisions. A brief summary, which serves as a useful transition, concludes each article's commentary. Footnotes are kept to a minimum, but the anticipated demand for citations from the legal community should increase the level of documentation by the next edition. The appendices contain the full texts of the 1980 Convention,<sup>34</sup> the 1978 draft convention,<sup>35</sup> the two 1964 Hague conventions,<sup>36</sup> and a useful concordance of all the conventions in a table of parallel section citations.<sup>37</sup>

Unlike many other scholars, Professor Honnold is a superb bibliographer. At the beginning of the book, he includes an exhaustive bibliography of relevant books, reports, conventions, and legislative sources.<sup>38</sup> This is followed by an exceptionally helpful report on the legislative history of the Convention.<sup>39</sup> A detailed table of contents places the various sections of the work in a general perspective, and a surprisingly comprehensive index concludes the book.

Writing with strong intellectual conviction, Professor Honnold breathes life into the Convention and makes its purpose meaningful. His book is a veritable *tour de force*.

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of this work into a looseleaf service similar to the Commerce Clearing House, *Common Market Reporter*.

33. J. HONNOLD, *supra* note 5, at 57.

34. *Id.* app. A, at 469-503.

35. *Id.* app. C, at 511-30.

36. *Id.* app. D, at 531-65.

37. *Id.* app. B, at 505-10.

38. The bibliography includes listings of books in French and German. It does not list articles in journals or other periodical literature. *Id.* at 29-34.

39. *Id.* at 37-43.